

PROTOCOL BETWEEN THE MONITORING OFFICERS OF CUMBRIA AND THE CUMBRIA CONSTABULARY

Purpose

To agree a protocol for the reporting of potential criminal offences arising from the failure to register or declare disclosable pecuniary interests or from speaking and voting where a member has a disclosable pecuniary interest and has not first sought a dispensation.

References to the Monitoring Officer also include the Deputy Monitoring Officer where appropriate and references to the Independent Person mean any or more than one as appropriate.

Introduction

Section 34 of The Localism Act 2011 created a criminal offence where a Member or co-opted Member fails, without reasonable excuse, to comply with the requirements of the Act to register or declare disclosable pecuniary interests (DPIs) or takes part in council business at meetings or when acting alone when prevented from doing so. If found guilty of such an offence the penalty can be a fine (under the current levels) of up to £5,000 and a disqualification from holding office for up to 5 years.

The Code of Conduct

The Cumbrian authorities adopted a new Code of Conduct in July 2012. Subsequent to that Cumbria County Council adopted a variation of the code, but the Codes incorporate the legislation, contain details of what amounts to a DPI, the ability to obtain a dispensation to participate and vote where a member has a DPI and legislation provides that it is a criminal offence to;

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election,
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the Register,
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that has been disclosed by a member at a meeting,
- Participate in any discussion or vote on a matter in which a member has a disclosable pecuniary interest,
- As an Executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer of the disclosable pecuniary interest within 28 days of the interest,
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The Yorkshire Dales National Park Authority have a similar code.

The Process

If the Monitoring Officer becomes aware, either via a complaint made under the council's existing complaints procedure, or via any other means he/she will first gather together all relevant documentation for consideration. He/she will then ascertain whether any dispensations have been granted and the extent of any which have. The Monitoring Officer will not carry out any investigation beyond information gathering and if he/she is of the opinion that there is prima facie evidence of such a breach of the Code relating to DPIs. He/she will then discuss the case with the Independent Persons (IP) confidentially and seek their views. At this stage no contact will be made with the subject member against whom the complaint is made as this may prejudice any investigation the Police may wish to undertake or subsequent prosecution. In addition the Monitoring Officer and the IP will be unable to assist or advise the subject member against whom the complaint is made should the Police become involved.

If the Monitoring Officer concludes that there is evidence of a breach he/she must report the matter to the police and send all relevant documentation to them. At this stage the Monitoring Officer does not have any discretion and it will be for the Police to conduct whatever investigation they consider appropriate. The Monitoring Officer may initially contact the Police Liaison Officer by telephone to inform him/her of the situation before sending the documentation. The nominated point of contact in Cumbria is the Detective Inspector of the Force Intelligence Bureau.

Similarly if the police receive a complaint from a member of the public they will inform the Monitoring Officer of the receipt of that complaint when appropriate so. Details of the current Cumbrian Monitoring Officers are listed below.

The Monitoring Officer and/or the IP will make themselves available for interview as witnesses in any subsequent court processes should this be required by the Police or Crown Prosecution Service (CPS).

The Police Liaison Officer when appropriate and legitimate will provide updates to the Monitoring Officer on the progress of their investigation.

The Monitoring Officer will report the outcome of the matter confidentially to the Standards Committee (or equivalent Committee as appropriate), unless the matter concerns a member of that Committee when only the Chair will be informed. If the matter concerns the Chair of that Committee no report will be made until after the police have interviewed the Chair and the CPS have agreed for the matter to be disclosed.

Once the police have completed their investigation and a decision has been made by the CPS the process will be as follows;

- If a prosecution proceeds the Monitoring Officer will take no further action apart from updating the Standards Committee (or equivalent committee) on its progress,
- If the CPS decides not to proceed with a prosecution then the Monitoring Officer will decide whether it is appropriate to process the complaint through the Council's internal arrangements for dealing with such complaints. It is accepted that the CPS require a higher standard of proof (beyond reasonable doubt) for a criminal prosecution whereas the Monitoring Officer/Standards Committee will need only to consider the balance of probabilities. Therefore whilst a criminal offence may not have been committed, there still may be sufficient evidence that a breach of the Code of Conduct has occurred. However

the Monitoring Officer will take into consideration the fact that a Police investigation has taken place and the outcome from it in determining whether it is appropriate and proportionate to consider a further investigation under the code of conduct or whether some other action would be more appropriate.

- In the event that the Council pursues the matter further in terms of a Code of Conduct breach, it will inform the Police of their decision.

Point of Contact

Cumbrian Monitoring Officers and Cumbria Constabulary

Authority	MO	Email address
Allerdale Borough Council	Sharon Sewell	Sharon.Sewell@Allerdale.gov.uk
Barrow Borough Council	Jon Huck	jwhuck@barrowbc.gov.uk
Carlisle City Council	Mark Lambert	mark.lambert@carlisle.gov.uk
Copeland Borough Council	Sarah Pemberton	Sarah.Pemberton@copeland.gov.uk
Cumbria County Council	Iolanda Puzio	Iolanda.Puzio@cumbria.gov.uk
Eden District Council	Matthew Neal	m.neal@eden.gov.uk
South Lakeland District Council	Debbie Storr	d.storr@southlakeland.gov.uk
Police and Crime Commissioners	Vivian Stafford	vivian.stafford@cumbria.police.uk
Lake District National Park Authority	Julie Wood	Julie.Wood@lakedistrict.gov.uk
Yorkshire Dales National Park Authority	Gill Cooper	Gill.Cooper@yorkshiredales.org.uk
Cumbria Constabulary	FIB Detective Inspector	fib@cumbria.police.uk